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Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

LOUIS G. DAILY, INDIVIDUALLY AND AS PART OF A CLASS OF PROTECTION FROM ABUSE DEFENDANTS, PETITIONERS

v.

JUDGES OF THE COURT OF COMMON PLEAS, FIRST JUDICIAL DISTRICT, FAMILY COURT DIVISION and THE HONORABLE PAUL A. PANEPINTO, ADMINISTRATIVE JUDGE, PHILADELPHIA FAMILY COURT and JUSTICES OF THE SUPREME COURT OF PENNSYLVANIA

Petition for a Writ of Certiorari
to the United States Court of Appeals for the Third Circuit

# PETITION FOR A WRIT OF CERTIORARI

LOUIS G. DAILY
1260 UNRUH AVE.
PHILA.PA. 19111
215-722-7475

PRO SE FOR PETITIONERS

46 PP

## QUESTIONS PRESENTED

1. Does the Rooker-Feldman doctrine apply to a general constitutional challenge to a state law?

2. Does the Rooker-Feldman doctrine apply to a general constitutional challenge to a state law where the State Superior Court allowed written but no oral argument on constitutionality and the State Supreme Court refused allocatur?

There are no disclosures to be made as required by rules 14.1(b) and 29.6.

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U.S.D.C.E.D. PA., No. 99-cv-2059. April 27, 2000.

Daily v. Judges of the Court of Common Pleas, et al
Docket 1419, (3d Cir. 2002). June 24

## PETITION FOR A WRIT OF CERTIORARI

Petitioner Louis G. Daily respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the 3rd Circuit in this case.

## OPINIONS BELOW

The opinion of the court of appeals is an unreported-not precedential decision at Docket 1419, (3d Cir. 2002). June 24.
The opinion of the United States District Court For The Eastern District of Pennsylvania is reported at U.S.D.C.E.D. PA., No. 99-cv-2059. April 27, 2000.

## JURISDICTION

The judgment of the court of appeals was entered on June 24, 2002. This Court's jurisdiction is invoked under 42 USC 1983.

## STATEMENT OF THE CASE

Petitioner Louis G. Daily was accused of abuse by his wife Madeline (who tragically passed away on 10/20/99) resulting in a series of restraining orders pursuant to the Pennsylvania Protection From Abuse (PFA) Law, 23 Pa. C.S.A. section 6101 et seq. This series of orders included Temporary Ex Parte Orders, an Order by Consent Without Admission, and a Final Protection Order After a Hearing, all pursuant to the PFA law. The series of orders ejected petitioner from his home, thus separating petitioner from his children. After the last PFA order, a Final Protection Order After A Hearing, petitioner appealed to the Superior Court of Pennsylvania citing abuse of discretion and also that the PFA law offends the U.S. and Pennsylvania Constitutions on a number of grounds, most notably that the PFA law violates principles of due process and equal protection. The Superior Court held an oral hearing, but informed petitioner at the oral hearing that the petitioner should take arguments regarding constitutionality to the Pennsylvania Supreme Court, and allowed no oral argument on constitutionality. After considering briefs, the Superior Court upheld the trial judge and rejected petitioner's written arguments regarding constitutionality. The Pennsylvania Supreme Court refused allocatur. Petitioner then filed suit with the U.S. District Court For Eastern Pennsylvania, arguing that the Pennsylvania PFA law is unconstitutional. [1] The

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[1] [1] Petitioner filed a second suit with the District Court which was also rejected due to the Rooker-Feldman doctrine and affirmed by the Appeals Court. (docket No. 00-1566). The gravamen was that the District Attorney had twice ordered petitioner's arrest (acquitted after a trial), and that the police had twice removed petitioner's children from his vehicle at the behest of petitioner's wife, despite petitioner having in

District Court decided that it had no jurisdiction due to the Rooker-Feldman doctrine. Petitioner then appealed to the United States Court of Appeals For The Third Circuit, arguing that the Rooker-Feldman doctrine does not apply to a general challenge to the constitutionality of a state law and that petitioner did not have sufficient opportunity to make his constitutional challenge in state court. The appeal court upheld the district court.

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his possession temporary custody papers. Petitioner claimed that both the D.A. and the police are prejudiced against males in domestic matters, and asked for review of the PFA law and other relief.

## REASONS FOR GRANTING THE WRIT

The appeal to the lower federal courts to find the PFA law unconstitutional is not prohibited by the decisions of the United States Supreme Court in Rooker v. Fidelity Trust Co., 263 U.S. 413(1923), and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462(1983). In Feldman, the Supreme Court made it clear that it was only Feldman's claims that the bar examination rules were applied to him in an unconstitutional manner that were barred. In fact, the court remanded the case for a decision on Feldman's claim that the bar examination rules were generally unconstitutional.

Petitioner's claims of unconstitutionality in the state court are not "inextricably intertwined" with petitioner's other claims in state court. Petitioner has made two basic claims in state court that can very easily be extricated. First, petitioner claimed that the trial judge in the last PFA hearing erred in finding the petitioner guilty of abuse. Petitioner concedes that, indeed, the lower federal courts have no jurisdiction over that finding and did not ask the federal courts to review that judgement. Second, petitioner claimed that the PFA law is generally unconstitutional.

The salient constitutional claims made by petitioner in state and federal courts are:

1. The PFA law allows for a never-ending series of ejections from the marital home, resulting in permanent eviction. (due process).

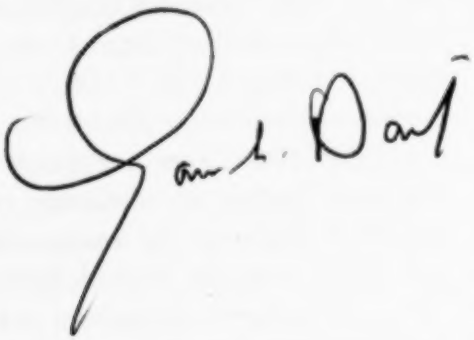
2. The PFA law is aimed at males, and almost all of the thousands of evictees per year are males. (equal protection).

3. The PFA process begins with an ex-parte eviction. (due process).

4. Separating petitioner from his children (even with biweekly visitation) violates petitioner's right to raise his children and has profound implications for custody hearings. (due process.)

5. In redefining assault and battery as a civil case of "abuse", the PFA law deprives petitioners of the rights of criminal defendants.

Finally, petitioner did not have a reasonable opportunity to argue his case in state court. The superior court allowed no oral argument regarding constitutionality and the state supreme court refused allocatur.



APPENDIX A.

Madeline S. Daily

v

Louis G. Daily

In the Court of Common Pleas
For the County of Philadelphia
Family Division
January Term, 1998
No. 8351

Final Protection Order by the Court After a Trial And A Finding of Abuse.

AND NOW, this 19th day of February, 1998, the following order is entered:

1. The defendant Louis G. Daily shall refrain from abusing, harassing, and/or threatening the plaintiff Madeline S. Daily or placing her in fear of abuse in any place where she may be found.

2. The defendant is enjoined and prohibited from living at, entering, attempting to enter, or visiting the residence located at 1260 Unruh Avenue, Philadelphia, Pennsylvania and any other subsequent address at which plaintiff resides during the pendency of this order, and plaintiff is granted exclusive possession and control of the premises.

The following additional relief is granted: Defendant is to pay counsel fees in the amount of $750.00 and $1200 in loss wages.

3. The defendant is hereby notified that if he resumes residence in the plaintiff's domicile contrary to this Order, he may be found in indirect criminal contempt which is punishable by a fine not to exceed $1000 and by a sentence of up to six months in jail.

4. The Court shall serve a coy of this Order on the Philadelphia Police Department and the State Police. A copy of this Order shall be placed forthwith in the county registry of protection orders.

5. The Court shall serve a copy of this Order on the defendant. Failure to make such service shall not stay the effect of this order.

6. Law enforcement officers, the staff of the county office maintaining the registry of protection orders, and Court personnel shall not disclose to defendant, defendant's counsel or any third party, the CONFIDENTIAL address of any domestic violence program involved in this case or any confidential address of plaintiff.

7. This Order shall be enforced by any law enforcement agency in any Pennsylvania county where a violation of the Order occurs.

8. This Order shall remain in full force and effect through February 18th, 1999.

THIS IS AN ORDER OF COURT, ANY VIOLATION OF THIS ORDER SHALL CONSTITUTE CONTEMPT OF COURT AND MAY BE PUNISHABLE BY A FINE OF UP TO $1000 AND A JAIL SENTENCE OF UP TO SIX MONTHS.

BY THE COURT:

JUDGE ROBINSON'S SIGNATURE APPEARS HERE

APPENDIX B.

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY FIRST JUDICIAL DISTRICT OF PENNSYLVANIA FAMILY COURT DIVISION

MADELINE S. DAILY — JANUARY TERM, 1998
NO. 8351
D.R. NO. 980108351

V

LOUIS G. DAILY

OPINION

ROBINSON, J.

Procedural Posture

Madeline S. Daily, plaintiff, filed a petition pursuant to the Protection From Abuse Act (the "Act"), 23 Pa. C.S.A. section 6101 et seq., on January 13, 1998, against her husband, Louis G. Daily, defendant. Her allegations are based on an incident which occurred on January 6, 1998, during an exchange of custody of their two children. Plaintiff also alleged an incident of abuse on December 30, 1997, during a similar custody exchange inside the 2/15 police district police station.

On January 13, 1998, a Temporary Ex Parte Order was issued granting Plaintiff "protection only" from Defendant. The Temporary Order remained in effect until a full hearing was rendered before the court. On February 19,1998, after a full and complete hearing on the merits of the petition, a Final Protection Order was entered for "protection only." (Simultaneously, there is a pending divorce action between the parties. By order dated January 6, 1998, issued in the divorce action, Mr. Daily was enjoined from entering the marital home at 1260 Unruh pending full hearing. Thus this Court did not address eviction in the permanent order issued under the Protection from Abuse Act.) Petitioner was granted additional relief of $750 for counsel fees and $1200 for loss of wages. Defendant was given until May 19, 1998, to pay the assessments for counsel fees and lost wages. It is this order which Defendant appeals.

Facts

Mr. And Mrs. Daily were the only two witnesses at the hearing. The Dailys have two sons, Louis (age 8) and Michael (age 6). Pursuant to a custody order, Mr. Daily has partial custody of Louis and Michael on Tuesdays from 4:30 pm to 7:30 pm, and on alternate weekends beginning on Friday at 4:30 pm. The transfer of the children is to occur at a specific Philadelphia police district.

Ms. Daily testified that on December 30, 1997, she was at the 15th Police District with her two children awaiting Mr. Daily's arrival for the transfer of custody. She further testified that the

children were reluctant to go with Mr. Daily when he arrived. The eight year old child was clinging to Mrs. Daily. When Mr. Daily pulled the child away from Mrs. Daily, he pulled her left arm and caused her to fall to the ground. She suffered muscular strain and some bruising.

On January 6, 1998, Ms. Daily again took the children to the police district for the custody transfer and again the children were reluctant to go with Mr. Daily. Mr. Daily took the children and left the police district. When Mrs. Daily left the police district, Mr. Daily and the children had not yet left the area. Michael (age six) ran toward Mrs. Daily and flung himself at her. In an effort to retrieve Michael, Mr. Daily took Mrs. Daily's arm "from the shoulder and elbow" and twisted it.

Mrs. Daily was injured from the twisting and sought medical treatment at Jeannes Hospital. Her upper right shoulder was swollen. She was instructed to rest in bed, to take warm baths and painkillers, if necessary.

Mrs. Daily is a physician who was employed as an independent contractor at the time of the incident. She missed two days of work and then had to return home on Friday when she was unable to suture a patient, perform deliveries or perform emergency C-sections. Had she worked on Wednesday and Thursday, she would have been paid a minimum of $300 on each day. She would have earned an additional $250 on Friday if she had not left early due to her injuries. On Saturday and Sunday she would have earned $400 on each day, if she had worked. Mrs. Daily does not work on Mondays and Tuesday and returned to work the following Wednesday. Mrs. Daily

further testified that as an independent contractor, she is not paid for the days she does not work, regardless of the reason. Mrs. Daily incurred legal fees in excess of $1040 to file and prosecute her petition under the Protection From Abuse Act.

Mr. Daily testified that Mr. Daily was sitting on a chair in the police district on December 30, 1998, when he arrived to take his sons. After he waited several minutes for the children to say good bye to Mrs. Daily, he took Louis' hand and turned to lead him out the door. Mrs. Daily fell off the chair and Mr. Daily was not sure how it happened. He denied coming into physical contact with Mrs. Daily.

On January 6, 1998, Mr. Daily testified that he took the children from the police district to a taxi cab waiting approximately a half block away. He testified that Mr. Daily ran over to the cab and attempted to get in the cab or to remove the children from the cab. He further testified that Mrs. Daily's body touched his body in this process.

Discussion

Mr. Daily filed a pro se appeal from the Order, contending that the Final Protection Order is (1) not in the best interests of the children as it makes custody exchanges more difficult and helps Plaintiff pursue her plan of minimizing paternal contact with the children; (2) that assessing damages of $1950 violates the spirit of judicial discretions under the Act; (3) that the Act under which this decision was made is unconstitutional in that it violates both the Constitution of the

Commonwealth of Pennsylvania and the Constitution of the Unite States; and (4) that domestic relations hearings which are not open to the public violate both the Constitution of the Commonwealth of Pennsylvania and the Constitution of the United States. None of these issues has merit.

The trial court, as trier of fact, is free to believe all, part or none of the evidence presented and is likewise free to make all credibility determinations and resolve conflicts in evidence. In Re J.W., 396 Pa. Super. 379; 578 A2d 952 (1990). It is well established that on appeal, the appellate court defers to the credibility determinations of the lower court as to witnesses who appeared before it. Miller v Walker, 445 Pa. Super. 537; 665 A2d 1252 (1995). See R.G. v T. D., 448 Pa. Super. 525;672 A2d341 (1996). After observing the demeanor of both Mr. And Mrs. Daily as they testified and after examining the substantive content of the testimony that each presented, the Court finds Mrs. Account of both incidents to be far more credible than that of Mr. Daily. Furthermore, Mr. Daily did not contest Mrs. Daily's account of her medical treatment, time lost from work, lost wages or attorney fees.

Second, Mr. Daily contends that assessing damages of $1950 violates the spirit of judicial discretions under the Protection From Abuse Act. The Act allows for the Court to direct the Defendant to pay reasonable sums for lost wages as well as for counsel fees:

The order or agreement may include:

..... Directing the defendant to pay the plaintiff for reasonable losses suffered as a result of the abuse, including medical, dental, relocation and moving expenses; counseling; loss of earnings or support; cost of repair or replacement of real or out of pocket losses for injuries sustained. In addition to out-of-pocket losses, the court may direct the defendant to pay reasonable attorney fees.

23 Pa.C.S.A. section 6108. Assessments for lost wages as well as for counsel fees have been upheld on appeal. Krassnoski v. Rosey, 454 Pa. Super. 78; 684 A2d 635(1996).

The court may assess reasonable attorney fees based on the circumstances of the case. Mr. Daily was ordered to pay on $1200 for loss of wages when Mrs. Daily testified that her loss was $1650 to $1700. Similarly, the assessment of $750 for counsel fees was reasonable. The hearing was approximately two hours in duration. Counsel prepared the petition filed by Mrs. Daily. Mrs. Daily testified that she had been billed in excess of $1040 in counsel fees for the action.

An award of attorney's fees serves the Act's purposes by deterring defendants from repeating the type of conduct that lead to the court's finding of abuse. Krassnoski, supra, at 86, 639. Thus the court did not abuse its discretion in assessing damages against Mr. Daily and such assessments do not violate the spirit of the act, but promote it.

Mr. Daily contends that the Protection From Abuse Act is unconstitutional in that it violates the Constitution of the Commonwealth of Pennsylvania and the Constitution of the United

States is lacking in merit. He fails to specify what provision of either Constitution violates the Act. The provisions of the Act have been examined by the appellate courts on a number of occasions and been upheld: see Eichenlaub v. Eichenlaub, 340 Pa. Super. 552, 490 A2d 918 (1985) (lack of jury trial for criminal contempt upheld); Commonwealth v. Allen, 506 Pa. 500, 486 A2d 363 (1984) (double jeopardy); Commonwealth v. Zerphy, 332 Pa. Super. 388, 481 A 2d 670 (1984) (double jeopardy); Boyle v. Boyle, 12 D. & C. 3d 767 (1979) (due process). Without additional specificity Mr. Daily's contention can not be addressed here and should be deemed waived.

For the above reasons, this court respectfully requests that its Order of February 19, 1998 be affirmed.

BY THE COURT:
JUDGE ROBINSON'S SIGNATURE
APPEARS HERE

APPENDIX C.

IN THE SUPERIOR COURT OF PENNSYLVANIA

LOUIS G. DAILY

v

MADELINE S. DAILY NO. 734 PHILADELPHIA 1998

Appeal from the ORDER ENTERED February 19, 1998, In the Court of Common Pleas of PHILADELPHIA County, FAMILY No. January Term, 1998-8351

BEFORE: KELLY, EAKIN, AND OLSZEWSKI, JJ.

MEMORANDUM:

This is a pro se appeal from a final protection from abuse (PFA) order entered against appellant. Apellant asserts various abuses of the trial court's discretion and further contends that the PFA act is unconstitutional. (23 Pa. C.S.A. sections 6101-6118.)

The trial court summarizes the history of this case as follows:

Appellee filed a petition pursuant to the PFA on January 13, 1998, against her husband [appellant]. Her allegations are based on an exchange of custody of their two children. Appellee also alleged an incident of abuse on December 30, 1997, during a similar custody exchange outside the 2/15 Police District police station.

On January 13, 1998 a Temporary Ex Parte Order was issued granting appellee "protection only" from appellant. The Temporary Order remained in effect until a full hearing was rendered before the court. On February 19, 1998, after a full and complete hearing on the merits of the petition, a Final Protection Order was entered for "protection only." Simultaneously, there is a divorce action between the parties. By order dated January 6, 1998, issued in the divorce action, Mr. Daily was enjoined from entering the marital home at 1260 Unruh Street, pending full hearing. Thus, the trial court did not address eviction in the permanent order issued under the PFA Act.

Mr. and Mrs. Daily were the only two witnesses at the hearing. The Dailys have two sons, Louis (age 8) and Michael (age 6). Pursuant to a custody order, Mr. Daily has partial custody of Louis and Michael on Tuesdays from 4:30 pm to 7:30 pm, and on alternate weekends beginning on Friday at 4:30 pm. The transfer of the children is to occur at a specific Philadelphia police district.

Ms. Daily testified that on December 30, 1997, she was at the 15th Police District with her two children awaiting Mr. Daily's arrival for the transfer of custody. She further testified that the children were reluctant to go with Mr. Daily when he arrived. The eight year old child was clinging to Mrs. Daily. When Mr. Daily pulled the child away from Mrs. Daily, he pulled her left arm and caused her to fall to the ground. She suffered muscular strain and some bruising.

On January 6, 1998, Ms. Daily again took the children to the police district for the custody transfer and again the children were reluctant to go with Mr. Daily. Mr. Daily took the children and left the police district. When Mrs. Daily left the police district, Mr. Daily and the children had not yet left the area. Michael (age six) ran

toward Mrs. Daily and flung himself at her. In an effort to retrieve Michael, Mr. Daily took Mrs. Daily's arm "from the shoulder and elbow" and twisted it.

Mrs. Daily was injured from the twisting and sought medical treatment at Jeannes Hospital. Her upper right shoulder was swollen. She was instructed to rest in bed, to take warm baths and painkillers, if necessary.

Mrs. Daily is a physician who was employed as an independent contractor at the time of the incident. She missed two days of work and then had to return home on Friday when she was unable to suture a patient, perform deliveries or perform emergency C-sections. Had she worked on Wednesday and Thursday, she would have been paid a minimum of $300 on each day. She would have earned an additional $250 on Friday if she had not left early due to her injuries. On Saturday and Sunday she would have earned $400 on each day, if she had worked. Mrs. Daily does not work on Mondays and Tuesday and returned to work the following Wednesday. Mrs. Daily further testified that as an independent contractor, she is not paid for the days she does not work, regardless of the reason. Mrs. Daily incurred legal fees in excess of $1040 to file and prosecute her petition under the Protection From Abuse Act.

Mr. Daily testified that Mr. Daily was sitting on a chair in the police district on December 30, 1998, when he arrived to take his sons. After he waited several minutes for the children to say good bye to Mrs. Daily, he took Louis' hand and turned to lead him out the door. Mrs. Daily fell off the chair and Mr. Daily was not sure how it happened. He denied coming into physical contact with Mrs. Daily.

On January 6, 1998, Mr. Daily testified that he took the children from the police district to a taxi cab waiting approximately a half block away. He testified that Mr.

Daily ran over to the cab and attempted to get in the cab or to remove the children from the cab. He further testified that Mrs. Daily's body touched his body in this process.

Trial Court opinion, 4/16/98, at 1-4 (headings omitted).

The final PFA order prohibits appellant from abusing, threatening, or contacting appellee. It also enjoins appellant "from living at , entering, attempting to enter, or visiting" the marital residence and grants appellee $1200 compensation for lost wages and $750 counsel fees. This timely appeal followed.

Our standard of review is well settled;

In reviewing the validity of a PFA order, we must determine whether the evidence, in the light most favorable to petitioner and granting her the benefit of all reasonable inferences, was sufficient to sustain the trial court's determination that abuse was shown by a preponderance of the evidence. Moreover, we must defer to the lower court's determinations of the credibility of witnesses at the hearing. R.G. v. T.D. 672 A.2d 341,342 (Pa. Super.1996) (citations omitted).

The PFA act empowers trial courts with broad authority to bring about a cessation of abuse. See 23 Pa. C.S.A. section 6108. We will not interfere with the trail court's choice of relief absent an abuse of discretion. See Snyder v. Snyder, 629 A.2d 977 (Pa. Super. 1993).

We first address appellant's claim that the evidence does not support a finding that he abused appellee. The relevant definition of abuse is knowingly engaging in a course of conduct or repeatedly committing acts toward another person, including following the person, without

proper authority under circumstances which place the person in reasonable fear of bodily injury. 23 Pa.C.S.A. contest 6102a5. Appellant does not contest the reasonableness of appellee's fear. Rather, he contends that the testimony of the parties clearly shows the appellee to be the aggressor. Appellant's brief at 8. He argues that appellee was interfering with custody and he had a right to defend himself. See id. The court did not find appellant's allegations of custody interference credible. See trial court opinion, 4/16/98, at 4. We will not interfere with the court's credibility determinations. See R.G., supra. Moreover, interference with a custody transfer would not justify violent response. Appellant also suggests that, if he did harm appellee, the act was unintentional. See appellant's brief at 8. Appellee testified that during the second confrontation, she told appellant he was hurting her and appellant responded, I don't care, woman. N.T., 2/19/98, at 13. We find the evidence sufficient to sustain a finding of abuse.

Appellant contends that the legal fee and lost wage awards are excessive. The trial court ably addressed this claim in its Rule 1925 opinion.

> Appellant contends that assessing damages of $1950 violates the spirit of the PFA act. The PFA act allows for the court to direct the defendant to pay reasonable sums for lost wages as well as for counsel fees. The order may:
> "direct the defendant to pay the plaintiff for reasonable losses suffered as a result of abuse, including medical, dental, relocation and moving expenses; counseling; loss of earnings or support; costs of repair or replacement of real or out-of-pocket losses, the court may direct the defendant to

pay reasonable attorney fees." 23 Pa.C.S.A. Consent 6108.

Assessments for lost wages as well as for counsel fees have been upheld on appeal. Krassnoski v. Rosey, 684 A. 2d 635 (Pa.Super. 1996). The court may assess reasonable attorney fees based on the circumstances of the case. Appellant was ordered to pay only $1200 for loss of wages, when appellee testified that her loss was $1650 to $1700. Similarly, the assessment of $750 for counsel fees was reasonable. The hearing was approximately two hours in duration. Counsel prepared the petition filed by appellee. Appellee testified that she had been billed in excess of $1040 in counsel fees for the action.

An award of attorney's fees serves the PFA act's purposes by deterring defendants from repeating the type of conduct that lead to the court's finding of abuse. Krassnoski, 684 A.2d at 639. Thus, the court did not abuse its discretion in assessing damages against appellant and such assessments do not violate the spirit of the act, but promote it.

We agree with the trial court's analysis and find no abuse of discretion in the legal fee or lost wage awards.

Appellant also contends that the court abused its discretion because the PFA order interferes with the parties' custody arrangement and is not in the best interest of the children. Appellant contends that prohibiting him from contacting appellee is incompatible with partial custody of their children. The trial court used a pre-printed form for the final PFA order. Standard language in the form prohibits appellant "from having any contact

with appellee including, but not limited to, entering or attempting to enter the place of employment, business, or school of appellee or harassing appellee and appellee's relatives." Admittedly, this broad language suggests prohibition of all possible contact between the parties. In many PFA orders such language is doubtlessly intended to have exactly that effect. Nevertheless, we do not believe the trial court intended to prohibit incidental contact necessary to conduct reasonable custody transfers.

The trial court, although aware that custody transfer would necessitate party contact, did not modify the custody arrangement. Thus interpreting the "no contact" language strictly would produce an unreasonable result. While we do not approve of the imprecise language used by the trial court, we find remand unnecessary. Rather, we simply clarify that the final PFA order in this case does not prohibit incidental contact necessitated by custody transfers. The order does, however, prohibit abusive behavior during transfers and any contact outside that required by the parties' custody arrangement.

Finally, appellant raises six challenges to the constitutionality of the PFA act. Many of appellant's claims depend on the erroneous premise that PFA proceedings are criminal in nature. We have characterized PFA proceedings as "quasi-criminal." See Laczkowski v. Laczkowski, 496 A. 2d 56, 66 (Pa. Super. 1985). Nevertheless, we have rejected attempts to invoke the panoply of constitutional rights afforded criminal defendants. See, e.g. , Snyder, 629 A.2d at 981. We have explained that the PFA act is "not, nor was meant to be, a statute penalizing past criminal conduct. Rather, the primary goal of the act is not retrospective punishment but

advance prevention of physical and sexual abuse." ID. (citations and internal quotation marks omitted).

First, appellant asserts that the act violates the Fourth Amendment of the United States Constitution and Article One, Section Eight of the Pennsylvania Constitution, both of which protect against unreasonable searches and seizures. See, e.g. Commonwealth v. Blee, 695 A.2d 802, 805 n.6 (Pa. Super. 1997). Appellant has been subject o neither a search nor a seizure. See Commonwealth v. Gibson, 638 A.2d 203, 205 (Pa. 1994) (defining the term "search"); Commonwealth v. Matos, 672. A.2d 769, 774-76 (Pa. 1996) (discussing the definition of "seizure"). Accordingly, this claim is meritless.

Second, appellant advances a generalized claim that the PFA act offends the procedural due process guarantees of the United States and Pennsylvania Constitutions. We have held that the procedures established by the PFA act satisfy the constitutional guarantees of due process. R.G., 672 A.2d at 343. Accordingly this claim is meritless.

Third, appellant asserts that the Sixth Amendment of the United States Constitution and Article One, Section Nine of the Pennsylvania Constitution guarantee him court-appointed counsel to assist in his PFA defense. These provisions guarantee, inter alia, court-appointed counsel for indigent defendants. See, e.g., Commonwealth v. Garvin, 485 A.2d 36, 41-42 (Pa.Super. 1984) (Spaeth, J. concurring) (providing a historic discussion of the right to court-appointed counsel). Assuming arguendo that indigent PFA defendants are entitled to appointed counsel, appellant has not argued or proven his indigence. Moreover, appellant was represented by paid counsel in the hearings below and never requested appointed

counsel. Accordingly, we conclude that his claim is waived.

Fourth, appellant asserts that, because of the amount in controversy, he is guaranteed a jury trial. This claim was waived by appellant's failure to timely demand a jury trial. See Pa.R.C.P. 1007.1(a) ("In any action in which the right to jury trial exists, that right shall be deemed waived unless a party files a written demand for jury trial not later than twenty (20) days after service of the last permissible pleading."). Although we do not address whether PFA defendants are ever entitled to trial by jury, we note that such procedure is antithetical to the swift process required to prevent domestic abuse. See Eichenlaub v. Eichenlaub, 490 A.2d 918, 922 (Pa.Super. 1985).

Fifth, appellant contends that the $1,950 award for appellee's lost wages and counsel fees is an unconstitutionally excessive fine. The $1,950 amount is not a fine, but rather a damage award between private parties. Accordingly the constitutional proscriptions against excessive fines are inapplicable. See Browning-Ferris v. Kelco Disposal, Inc., 492 U.S. 257 (1989); Geffen v. Baltimore Markets, Inc., 191 A. 24, 28 (Pa. 1937). Thus, this claim is meritless.

Lastly, appellant contends the PFA act is administered in a fashion that discriminates against the male gender, violating constitutional guarantees of equal protection. Equal protection of the laws "not only proscribes the enactment of discriminatory laws, but also the discriminatory enforcement of laws which are fair on their face." Commonwealth v. Lewis, 279 A.2d 26, 29 (Pa. 1971) (citations omitted). Appellant offers to produce statistical evidence that men and women commit domestic abuse equally, but women seek PFA relief more frequently. Appellant also offers a newspaper article that

allegedly quotes a Philadelphia Family Court judge saying, "The system is very responsive to women . . . erring on the side of caution by requiring minimal evidence to grant protection orders." (Appellant included several documents in the reproduced record to support these claims. This material is not part of the certified record and, thus, not properly before this Court. See, e.g. Mid-Island Properties, Inc. v. Manis, 570 A.2d 1070, 1071-72 (Pa. Super. 1990). Even if appellant could prove these allegations, they would not support his discrimination claim. The fact that women are more likely to seek PFA relief does not suggest that men are treated disparately when they seek relief. Moreover, if women seek protection from abuse most frequently, it is understandable for a judge to mistakenly reference "women" rather than "victims of abuse" when discussing the PFA act. Such semantic errors do not prove bias. As appellant's offered evidence does not support a finding of discriminatory administration, his claim lacks merit.

Order affirmed.

APPENDIX D

IN THE SUPREME COURT OF PENNSYLVANIA

LOUIS G. DAILY NO. 633 E.D. Allocatur Docket 1998
Petitioner

V

MADELINE S. DAILY
Respondent

PETITION FOR ALLOWANCE OF APPEAL FROM THE SUPERIOR COURT

ORDER

PER CURIAM:

AND NOW, THIS 7TH DAY OF APRIL 1999, THE PETITION FOR ALLOWANCE OF APPEAL IS DENIED.

TRUE COPY FROM RECORD
ATTEST: APRIL 7, 1999
SIGNED, PATRICIA JOHNSON, CHIEF CLERK
SUPREME COURT OF PENNSYLVANIA,
EASTERN DISTRICT

APPENIDIX E

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LOUIS DAILY

CIVIL ACTION

Plaintiff

V

NO. 99-CV-2059

MADELINE DAILY, ET AL,
Defendants

Brody, J.

April 26, 2000

MEMORANDUM

Now before me is defendants', "Justices of the Court of Common Pleas First Judicial District Family Court Division," the Honorable Paul P. Panepinto, and "Justices of Supreme Court of Pennsylvania," motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). For the following reasons, I will grant the defendants' motion to dismiss. [1] [2]

1. Background

As required in ruling on this motion, the following facts are taken from the plaintiff's amended complaint and presented in the light most favorable to the plaintiff.

Plaintiff, proceeding pro se, claims that he and his wife, Madeline Daily, entered into a Final Protective Order by consent without admission on January 6, 1997, pursuant to the Pennsylvania Protection From Abuse Act ("PFA" act), Pa. C.S.A. section 6101 et seq. Plaintiff agreed to move out of the house he had previously shared with his wife and children (the "marital home") for a period of one year. The final protection order also provided for child support and visitation. Plaintiff thereafter filed for custody of his two children. The final protection order was expected to expire on January 7, 1998. Prior to January 7, 1998, plaintiff informed his wife, the Philadelphia Police Department and the District Attorney, among others, that he planned to move back into the marital home after January 7, 1998. Before January 7, 1998, plaintiff's wife filed for divorce, for exclusive possession of the marital home and for a second protection order. Plaintiff asserts that the divorce action is still unresolved. [3] Plaintiff's wife's

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2 As noted above, however, defendants state that the divorce action is no longer pending because of the death of plaintiff's wife. Defendants' attach an October 21, 1999 letter written to Judge Cipriani, from Madeline Daily's attorney stating in part that "it is with deep sadness that I report to you of the recent death of my client, Dr. Madeline Daily." Def.Resp. Ex.A.

second abuse petition was granted on January 13, 1998. Plaintiff claims that his wife was granted temporary exclusive possession of the marital home. Plaintiff's appeal from this final protection order was denied on January 13, 1998 and the Supreme Court of Pennsylvania denied plaintiff's petition for allowance of an appeal.

Plaintiff brings seven counts. First, plaintiff contends that "the series of two Temporary Ex Parte Protection orders and two Final Protection Orders and an Exclusive Possession order in the divorce action violates plaintiff's right to raise his children by usurping the power of the custody court." Pl. Am. Comp. At 2. In count two plaintiff claims that "restraining Orders...are clearly supposed to be temporary as envisioned by the State Legislators but evicted persons rarely get back into their houses because of additional orders for exclusive possession...this is an abuse of due process." Id. In count three plaintiff asserts that "an act which evicts people from their homes and children on the basis of accusation alone and on an ex-parte basis, even with a hearing ten days later, is contrary to the due process provisions of the U.S. Constitution (5th and 14th Amendment) and corresponding sections of the Pennsylvania Constitution." Id. Count four states in part that "it is an unconstitutional abridgement of due process and other rights to refine a traditionally criminal offense as a civil matter because it thus deprives the accused of the rights afforded criminal defendants." Id. In count five plaintiff brings a claim pursuant to the equal protection clause of the Constitution, alleging that "the Protection from Abuse Act violates the equal protection clause of the 14th Amendment to the U.S. Constitutions and corresponding section of the

Pennsylvania Constitution." Id. Count six asserts that "assessment of fees of $1950 without a jury trial violates the seventh amendment to the U.S. Constitution and corresponding sections of the Pennsylvania Constitution." Id. Finally, in the last count plaintiff contends that "evicting a person from his home on behalf of a complainant is an illegal seizure by the government prohibited by the fourth amendment to the U.S. Constitution and corresponding sections of the Pennsylvania Constitution." Id.

Plaintiff requests a declaratory judgment that: (1) eviction from a marital home pursuant to the PFA act cannot result in permanent exclusion from the marital home; (2) all protection orders pursuant to the PFA act must be proceeded by notice and a hearing; (3) all PFA hearings must be open to the public; (4) when a person is separated from his children as a result of a PFA order, the court will act diligently to see that such person has a continuing relationship with his children and opportunity to raise his children; (5) a person assessed fees or fines in excess of $50.00 pursuant to the PFA act must be granted a jury trial; (6) the PFA act must be administered in such a way so as to not result in the eviction of men in 90% or more of the cases; (7) defendants in PFA act cases must be afforded all the rights afforded criminal defendants; and (8) any other relief the Court deems appropriate.

II Standard

A complaint must be dismissed under Federal Rule of Civil Procedure 12(b)(1) when the court lacks subject matter jurisdiction. Dismissal is proper under Rule 12(b)(1) only when the claim "clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or ...is wholly insubstantial and frivolous."

Kehr Packages, Inc. v. Fidelcor, Inc. 926 F.2d 1406, 1409 (3rd Cir. 1991) (internal quotations omitted). A Rule 12(b)(1) challenge may be either a factual or facial challenge to the complaint. See Mortensen v. First Fed. Sav. & Loan Ass'n 549 F.2d 884 891 (3rd Cir. 1977). In the case of a factual challenge, the court is free to consider and weight evidence outside the pleadings to resolve factual issues bearing on jurisdiction and to satisfy itself as to the existence of its power to hear the case. See id. Therefore, "no presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims." See id. The plaintiff has the burden of proving that jurisdiction exists. See id.

III. Discussion.

Defendants move to dismiss plaintiff's complaint for lack of subject matter jurisdiction based on the Rooker-Feldman doctrine. [4] Under the Rooker-Feldman doctrine a federal district court does not have subject matter jurisdiction over challenges to state court decision. See Rooker v Fidelity Trust Co. 263 U.S. 413 44 S Ct. 149, 68 L.Ed. 362 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 103 S. Ct. 1303, 75 L.Ed. 2d 206 (1983). A federal claim is an impermissible challenge to a state court decision

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3 Defendants also contend that the plaintiff's case should be dismissed because there is no 'case or controversy" as required by Art. III section 2 of the United States Constitution. Defendants claim that they have no advocacy interest in the constitutionality of the Protection From Abuse Act and intervening events have removed the possibility of harm to the plaintiff in this matter. Because I will dismiss this case in whole based on the Rooker-Feldman doctrine, I will not address the merits of "defendants" assertion that this case fails to present a justiciable "case or controversy."

under Rooker-Feldman doctrine when entertaining the federal claim would be equivalent to an appellate review of the state court order. See Focus v. Allegheny County Court of Common Pleas, 75 F. 3d 834, 840 (3 Cir. 1996) The Third Circuit explained that "federal district courts lack subject matter jurisdiction to review final adjudications of a state's highest court or to evaluate constitutional claims that are 'inextricably intertwined with the state court's decision in a judicial proceeding." Blake v. Papadakos, 953 F. 2d 68, 71 (3rd Cir. 1992) (quoting Feldman, 460 U.S. at 483 n. 16).[5] Additionally, the doctrine applies not only to claims that were actually adjudicated in state court, but also to claims that could have been raised in state court. See Valenti v. Mitchell, 962 F. 2d 288, 296 (3rd Cir. 1992) stating that "we reject...plaintiff's argument that since they never raised, and the ...state court never considered, their ...constitutional challenges, Rooker-Feldman cannot bar them from pursing these claims in federal court."). Consequently, any federal action in which the requested relief would reverse or nullify the ruling of a state court decision is barred under the Rooker-Feldman doctrine. [6]

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4 In analyzing whether a federal claim is inextricably intertwined with a state court adjudication, the Third Circuit, in Centifanti v. Nix, 865 F.2d 1422 (3rd Cir. 1989), quoting Justice Marshall's concurrence in Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 107 S. Ct. 1519, 95 L.Ed. 2d 1 (1987), explained that:

> As a first step...the federal claim is inextricably intertwined with a state court adjudication if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it. Where federal relief can only be predicated upon a conviction that the state court was wrong, it is difficult to conceive the federal proceedings as, in substance, anything other than a prohibited appeal of the state court judgment.

5 The Rooker-Feldman doctrine also applies to final decisions of lower state courts. See Port Authority Police Benevelent Assoc. Inc. v Port

See FOCUS, 75 F.3d at 840. Therefore, defendants argue that plaintiff's claims are barred by this doctrine because a decision by this court would negate the state courts' determination that plaintiff's constitutional rights were not violated.

On February 19, 1998, the Family Court Division of the Court of Common Pleas for the County of Philadelphia ("Court of Common Pleas") issued a final protection order in Daily v Daily stating in part that "defendant, Louis G. Daily, shall refrain from abusing, harassing, and/or threatening the plaintiff Madeline S. Daily or placing her...in fear of abuse in any place where she...may be found."[7] Ex. A. Pl. Am. Comp. At 1 (Daily v. Daily, Jan. Term 1998, No. 8351, (Phila. CCP, Feb, 1998) (Robinson, J.). The Court of Common Pleas also ordered that "defendant is enjoined and prohibited from living at, entering, attempting to enter or visit the residence of Madeline S. Daily... and the plaintiff (Madeline S. Daily) is granted exclusive possession and control of the premises." Id. The order also provided for additional relief in that defendant (Louis Daily) was to pay counsel fees in the sum of $750.00 and $1,200 in loss wages to plaintiff. The Court of common Pleas' February 19, 1998 order was to remain in full force and effect through February 18, 1999.

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Authority of New York and New Jersey Police Dept. 973 F. 2d 169, 177-78 (3rd Cir. 1992).

6 In the body of plaintiff's amended complaint he mentions protection from abuse orders entered on January 6, 1997 and January 13, 1998. The January 13, 1998 order was a temporary ex parte order which remained in effect until a full hearing. On February 19, 1998, after a full and complete hearing on the merits, a final protection order was entered. See Ex. A Pl. Am. Comp. (Daily v Daily, Jan. Term 1998, No. 8351 (Phila. CCP, Feb. 19, 1998) (Robinson, J.)

After plaintiff appealed the Final Protection Order, Judge Robinson issued an opinion further explaining the Final Protection Order and requesting that the court's order of February 19, 1998 be affirmed. [8] See Ex. B Pl. AM. Comp. (Daily v Daily, Jan. Term 1998, No. 8351 (Phila. CCP). Judge Robinson addressed plaintiff's contention that the PFA act is unconstitutional in that it violates the Constitution of Pennsylvania and the Constitution of the United States. Judge Robinson found that plaintiff "fails to specify what provision of either Constitution violated the PFA Act. The provisions of the PFA Act have been examined by the appellate courts on a number of occasions and been upheld." Id at 5-6 (citing Eichenlaub v. Eichenlaub, 340 Pa. Super. 552, 490 A.2d 918 (1985) (lack of jury trial for criminal contempt upheld); Commonwealth v. Zerphy, 332 Pa. Super 388 481 A. 2d 670 (1984) (double jeopardy); Boyle v. Boyle, 12 Pa. D. & C. 3d 767 (1979) (due process)).

Plaintiff attaches to his motion the opinion of the Superior Court of Pennsylvania ("Superior Court") affirming the Court of Common Pleas' decision. The Superior Court also addressed plaintiff's constitutional arguments. First, the Superior Court rejected plaintiff's contention that the PFA proceedings are criminal in nature. While the Superior Court acknowledge that "we have characterized PFA proceedings as 'quasi-criminal.'...Nevertheless, we have rejected attempts to invoke the panoply of constitutional rights afforded criminal defendants." Ex. C. Pl. Am. Comp at 7 (Daily v Daily, No. 734 Phila. 1998, at 7 (Pa. Super. 1998)). The Superior Court stated that "we have explained that the

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7 Judge Robinson's opinion, attached to plaintiff's amended complaint, does not appear to be dated.

PFA act is 'not, nor was meant to be, a statute penalizing past criminal conduct. Rather, the primary goal of the act is not retrospective punishment but advance prevention of physical and sexual abuse. '" Id. (quoting Snyder v. Snyder, 427 Pa. Super, 494, 501, 629 A.2d 977, 981 (1993)).

Next, the Superior Court addressed the six separate constitutional arguments raised by plaintiff. First, the Superior Court rejected the plaintiff's attempt to invoke the Fourth Amendment because the plaintiff has not been subject o a search or seizure. See id. At 7-8. Second, the Superior Court held that plaintiff's claim that the PFA act violates his procedural due process guarantees is meritless because the Court has previously held that the procedures established by the PFA act satisfy the constitutional guarantees of due process. See id. At 8 (citing R.G. v. T.D., 448 Pa. Super. 525, 529, 672 A.2d 341,343 (1996). Third, the Superior Court dismissed plaintiff's claim that his Sixth Amendment rights were violated stating that "assuming arguendo that indigent PFA defendants are entitled to appointed counsel, appellant has not argued or proven his indigence. Moreover, appellant was represented by paid counsel in the hearings below and never requested appointed counsel. Accordingly, we conclude that this claim was waived." Id. Fourth, the Superior Court held that plaintiff's claim, that he was entitled to a jury trial because of the amount in controversy, lacked merit. Plaintiff's contention that his right to a jury trial was denied was waived because he failed to timely demand a jury trial. See id. Fifth, the Superior Court rejected plaintiff's contention that the $1950 award for Madeline Daily's lost wages and counsel fees was an unconstitutionally excessive fine. The $1950 amount was not a fine, but rather a damage award between private parties and therefore, the constitutional proscriptions against excessive fines are inapplicable. See id. At 9 (citing

Browing-Ferris v. Kelco Disposal, Inc. ,492 U.S. 257, 259-60, 109 S. Ct. 2909, 106 L. Ed. 2d 219 (1989); Geffen v. Baltimore Markets, Inc., 191 A. 24, 28, 325 Pa. 509 (1937). Finally, the Superior Court rejected plaintiff's assertion that the PFA act is administered in a fashion that discriminates against the male gender, violating constitutional guarantees of equal protection. The Superior Court reasoned that "the fact that women are more likely to seek PFA relief does not suggest that men are treated disparately when they seek relief...As appellant's offered evidence does not support a finding of discriminatory administration, his claim lacks merit." Id. At 10. On April 7, 1999, plaintiff's petition for allowance of an appeal to the Supreme Court of Pennsylvania was denied. See Ex. D P1. Am. Comp. (Daily v Daily, No. 633 E.D. Allocatur Docket 1998 (Pa. 1999)).

The claims plaintiff raises in this lawsuit were all addressed in the state court actions, therefore, entertaining this federal claim would be equivalent to an appellate review of the state court's decisions. In this lawsuit, plaintiff raises three counts based on a violation of his due process rights, one count alleging a deprivation of his equal protection rights, one count asserting a denial of his right to a jury trial pursuant to the Seventh Amendment and one count for violation of this Fourth Amendment right against illegal seizure. [9] As evidenced above, all of these allegations were directly addressed by the state

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8 Plaintiff also brings a count for the violation of his "right to raise his children." Plaintiff, however, fails to articulate an alleged constitutional violation. Providing the necessary deference to a pro se plaintiff's complaint, I will interpret plaintiff's argument as a due process claim. As evidenced above, however, the state court specifically rejected plaintiff's claim that the administration of the PFA act, in this case, violated his due process rights.

courts. Furthermore, in plaintiff's response to defendants' motion to dismiss he "admits that his constitutional claims in the instant case are identical to those made in the state courts." PL. Resp. at 3. Therefore, this court lacks subject matter jurisdiction and plaintiff's complaint will be dismissed.

In the absence of any supportable federal claims, I decline to exercise pendant jurisdiction over plaintiff's state law claims. See United Mine Workers of America v. Givvb, 383 U.S. 715, 728-29, 86 S. Ct. 1130, 16 L.Ed. 2d 218 (1966).

For the reasons stated above, I will grant defendants' motion to dismiss.

ORDER

AND NOW, this 26th day of April, 2000, I ORDER defendants' motion to dismiss (docket entry #17) is GRANTED. This case is DISMISSED WITHOUT PREJUDICE.

Judge Brody's signature
Appears here
Anita B. Brody, J.

Appendix F

UNREPORTED – NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

NO. 001419

LOUIS G. DAILY, PRO SE, INDIVIDUALLY AND AS PART OF A CLASS OF PFA DEFENDANTS
Appellant

v.

JUSTICES OF THE COURT OF COMMON PLEAS, FIRST JUDICIAL DISTIRCT, FAMILY COURT, DIVISION; PAUL A. PANEPINTO, THE HONORABLE, ADMINISTRATIVE JUDGE, PHILA. FAMILY COURT; JUSTICES OF THE SUPREME COURT OF PENNA.

On Appeal From the United States District Court
For the Eastern District of Pennsylvania
(D.C. Civ. No. 99-cv-02059)
District Judge: Honroable Anita B. Brody

Submitted Under Third Circuit LAR 34.1(a)
November 27, 2000

Before: MANSMANN, BARRY and ALDISERT, Circuit Judges

(Filed June 24, 2002)

OPINION

PER CURIAM

Appellant Louis Daily's wife filed a petition against him pursuant to the Protection From Abuse Act in January 1998.[1] Her allegations were based on incidents that occurred during the exchange of custody of their two children. On January 13, 1998, the state court issued a temporary ex parte order granting her protection from Daily. On February 19, 1998, after a hearing on the merits of the petition at which Daily was represented by counsel the court issued a final protection order. In a divorce action pending between the parties at this same time an order issued enjoining Daily from entering the marital home.

Daily challenged the constitutionality of Pennsylvania's domestic violence law in state court. In an opinion filed on November 25, 1998, in Daily v. Daily, No. 734 Philadelphia 1998, the Pennsylvania Superior Court affirmed the final protection order entered against Daily and considered and rejected his federal constitutional arguments. Among other things, the Superior Court held that there had been no procedural due process violation in the proceedings against Daily, and that the Act does not unfairly discriminate against men in violation of the Equal Protection Clause. The court also found that the protection

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[1] Pennsylvania's Protection From Abuse Act, 23 Pa. Cons. Stat. Ann. Section 6101 et seq. protects victims of domestic abuse through numerous provisions that enable courts to respond quickly and flexibly to both early signs and subsequent acts of abuse with the issuance of protection orders. See Commw. V. Snell, 737 A.2d 1232, 1235 (Pa. Super. Ct. 1999)

order was warranted given Daily's behavior. Daily's petition for allocatur to the Pennsylvania Supreme Court was denied in May 1999.

Daily then turned to federal district court where he filed a civil rights complaint under 42 U.S.C. section 1983 against the judges of the Philadelphia Family Court, the Honorable Paul A. Panepinto, and the justices of the state supreme court. [2] He raised the same constitutional arguments in the federal complaint that he raised in state court. In an order entered on April 27, 2000, the District Court dismissed the amended complaint for lack of federal subject matter jurisdiction. Applying the Rooker-Federal doctrine [3] the District Court held that federal district courts do not have jurisdiction to review state court decisions. The court noted that the Superior Court addressed all of Daily's constitutional challenges and found them lacking.

We will affirm for the reasons given by the District Court. Pursuant to the Rooker-Feldman doctrine, lower federal courts lack subject matter jurisdiction to engage in appellate review of state court determinations or to evaluate constitutional claims that are inextricably intertwined with a state court's decision in a judicial proceeding. See Parkview Associates Partnership v. City of Lebanon, 225 F.3d 321,325 (3d Cir. 2000). The only courts empowered to review for constitutional error the Superior Court's 1998 adjudication are the Pennsylvania

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[2] Daily also filed a separate action, but with similar or identical allegations, in federal district court against Philadelphia police commissioner John Timoney and others. See Daily v. Timoney, D.C. No 99-cv-00085, aff'd in the opinion issued by this court today at Daily v. Timoney, CA. No. 00-1566.

[3] See District of Columbia Ct. of Appeals v. Feldman, 460 U.S. 462 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923).

Supreme Court, and, ultimately, the Supreme Court of the United States under 28 U.S.C. section 1257. See E.B. v. Verniero, 119 F.3d 1077, 1090 (3d Cir. 1997). We agree with the District Court that Daily had a meaningful opportunity to have his constitutional challenges considered on the merits in the state courts. The Rooker-Feldman doctrine thus applies. Id. At 1090-92. Daily's argument in his brief on appeal that Pennsylvania judges are biased because they accept the conventional wisdom that men are more responsible for domestic violence than are women can be raised on direct review to the United States Supreme Court. We note also that a class was never certified by the District Court, see Fed.R. Civ. Pro. 23(c)(1); thus Daily's argument that Rooker-Feldman would not apply to a class action fails.

We will affirm the order of the District Court dismissing the amended complaint.

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania. On consideration whereof, it is now here ORDERED AND ADJUDGED by this Court that the judgment of the District Court entered on April 27, 2000 be, and the same is, hereby affirmed.

Costs taxed against appellant. All of the above in accordance with the Opinion of the Court.

ATTEST:

Kathleen Brennan, Acting Clerk
Ms. Brennan's signature
Appears here

DATED: June 24, 2002